

FRIDAY UPDATE—APRIL 8, 2005

*The weekly update of the activities of the Indiana General Assembly
A publication of the Indiana Judicial Center*

Enjoy this installment of the Friday Update, which highlights bills of interest to the Indiana Judiciary. Monday, April 11th, is the deadline for bills to pass through third reading in both chambers. The next communication from the Judicial Center will be a series of charts, organized by topic, listing the bills that have passed third reading. Following that, we will send a complete chart indicating bills that survive conference committee and the Governor's approval.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at http://www.in.gov/serv/lsa_billinfo. You may access past issues of the Friday Update at <http://www.in.gov/judiciary/center/leg/index.html>.

SALARY & BENEFITS:

SB 363, *the compensation bill* passed its third reading in the House.

JUVENILE LAW:

The House Judiciary Committee heard SB 422, which amends Indiana's adoption laws. Rep. Frizzell introduced the bill to the committee by highlighting some of the changes it makes, including the following:

1. establishes procedures for pre-birth waivers of paternity and waivers of notice of adoption by putative fathers;
2. provides that fathers, not mothers, may execute a pre-birth consent to adoption;
3. permits the transfer of adoption records of a child-placing agency, governmental entity, or licensed attorney who arranges an adoption to the state registrar for inclusion in the adoption history program; and
4. indicates the obligation to support the adopted person continues until the entry of the adoption decree and that does not extinguish past due support.

Rep. Orentlicher said permitting pre-birth adoption consent by the father alone treats the father and mother differently, reinforces the "deadbeat dad" mentality, and makes it easier for the father to relinquish parental rights than the mother. Steve Kirsh, an attorney who testified in favor of the legislation, indicated it was difficult to find the father in many instances, and letting him consent to adoption on a pre-birth basis was a practical consideration. A representative of Indiana's adoption agencies said even with counseling, mothers change their minds 50% to 60% of the time concerning adoption and supported the bill. With technical amendments, the bill passed 7-3.

The House Judiciary Committee next heard SB 2 concerning references to parenting time and Title IV-D litigation of the parenting time credit. Sen. Ford, the bill's author, explained the bill changes all references in the Indiana Code from visitation to parenting time. In addition, it prohibits a Title IV-D prosecutor from mediating, resolving, or litigating disputes between parties concerning the amount of parenting time and the parenting time credit. Rep. Kuzman spoke against this provision arguing that, since the parenting time credit is part of the child support guidelines, the IV-D attorney must handle issues relating to it for support purposes. Steve Johnson, of the Prosecuting Attorneys Council, stated litigants could present evidence to the court about the parenting time credit for the court's resolution if a dispute arose while setting the child support. The bill passed 8-2.

Last, the House Judiciary Committee heard SB 8 concerning arbitration in family law cases. Sen. Ford, the bill's author, explained the use of arbitration would occur only if both parties agreed. Once they agreed, the decision of the arbitrator would be binding and subject to appeal. Rep. Ulmer expressed concern that only a certified family law specialist, a private judge qualified under the ADR rules, or a former magistrate or commissioner of an Indiana court of record could hear these cases, but not an attorney agreed upon by the parties. Rep. Kuzman wondered why a family law mediator could not be used. Rep. Koch said a judge pro tem was an attorney who could hear any case, and had to take an oath before hearing a case, but no oath was required in this bill. Drew Soshnick, chair-elect of the Family and Juvenile Section of the Indiana State Bar Association, said the concern addressed by the limited list of persons permitted to arbitrate was to make sure the arbitrator had proficiency in family law. The statute provides the arbitrator must use Indiana's child support and parenting time guidelines. Committee members discussed how the list did not quite meet the stated concern of the ISBA. The Committee amended the bill to add, "a licensed attorney in the State of Indiana agreed upon by both parties" to the list of persons permitted to serve as a family law arbitrator.

Rep. Pond and other Committee members wondered why this program was being made available on a statewide basis without any pilot program. Rep. Thomas discussed the cost of arbitrator and whether an attorney arbitrator might be tempted to run up fees since both parties had to split the fees and there was no required disclosure of fees at the beginning of the arbitration. Committee members discussed second reading amendments to require the arbitrator to take an oath, as does a judge pro tem, and to require this to be a pilot program under the direction of the Supreme Court. The Committee also adopted an unrelated amendment limiting this chapter only to family law matters in this statute. It further provides an appellate court opinion interpreting or construing this chapter has precedential value only for family law arbitrations and does not apply to any other arbitration. The bill passed as amended 8-1.

BUDGET:

HB 1001, the state budget bill, contains various provisions of interest to Indiana courts. It is subject to repeated changes until the end of the legislative session, but here is what it contains as of April 1, 2005:

1. A requirement of billings from state juvenile institutions shall be forwarded on a quarterly basis to each county auditor. If the county does not pay the account in six months, the state auditor shall reduce the next property tax replacement credit and withhold the amount owed on the account. Effective July 1, 2005.
2. A repeal of legislation permitting Step Ahead Councils. Effective July 1, 2005.
3. A provision for child protection or child welfare caseworkers to have a caseload of twelve (12) initial investigations per month, seventeen (17) active children in ongoing cases, or a combination of no more than four (4) investigations and ten (10) active ongoing cases per month. Effective after June 30, 2008.
4. A provision for early intervention services to the maximum extent for a child less than months (19) months and the extent possible for a child at least nineteen (19) months; and include training for a family member or guardian in providing the service. Effective July 1, 2005.
5. A requirement that the local child protection service must have sufficient qualified staff to comply with the maximum caseloads for caseworkers, provide training to legal representatives of the child protection services system, and provide training to representatives of the child protective services regarding the constitutional rights of the family. Effective July 1, 2008.
6. An increase in the senior judge per diem from \$100 to \$200 per day after thirty (30) days of service in the calendar year. Effective July 1, 2005.
7. Language requiring that local counties and the budget agency shall attempt to establish a repayment plan before August 15, 2005 for monies owed to DOC by a county for the cost of juveniles before July 1, 2005. If the repayment plan is not signed before August 15, 2005, the state auditor shall reduce the distribution of property tax replacement credits to that county and spread the reductions equally over the state fiscal years ending in 2006, 2007, 2008 and 2009. Effective July 1, 2005.